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See Attachment A for additional counsel

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

DIGITAL IMPACT, INC., a Delaware  
corporation,

Plaintiff,

vs.

BIGFOOT INTERACTIVE, INC., a Delaware  
corporation,

Defendant.

**RELATED CASES:**  
**NO. C05 00636 SBA**  
**NO. C05 00990 SBA**

**CASE MANAGEMENT ORDER**

CMC DATE: September 28, 2005  
Time: 3:00 p.m.  
Before: Hon. Sandra B. Armstrong

AND RELATED COUNTERCLAIM

**CASE MANAGEMENT ORDER**

Case Nos. C 05-00636 SBA and C-05-00990 SBA

DIGITAL IMPACT, INC., a Delaware corporation,

Plaintiff,

vs.

YESMAIL, INC., a Delaware corporation,

Defendant.

AND RELATED COUNTERCLAIM

The initial case management conference was held before the Court via telephone conference on September 28, 2005, at 3:00 p.m. Thomas E. Moore III of Tomlinson Zisko LLP appeared on behalf of the plaintiff, Digital Impact, Inc. ("Digital Impact"), Arthur M. Dresner and John P. Bovich of Reed Smith LLP appeared on behalf of defendant Bigfoot Interactive, Inc. ("Bigfoot"), and L.J. Chris Martiniak, Peter E. Gratzinger and Christopher J. Longman of Heller Ehrman LLP appeared on behalf of defendant Yesmail, Inc. ("Yesmail"). Good cause appearing,

**IT IS HEREBY ORDERED :**

1. The parties have represented that they are attempting to resolve both related cases and that they will be using the ADR services of the court. Pending this attempt, discovery in both related cases shall be stayed. If resolution of either case is not successful, the court will then conduct a limited "mini-Markman" proceeding in accordance with the rest of this order. At that time, limited discovery may be conducted solely as to the issues presented in that proceeding without prejudice to subsequent discovery on all relevant issues if the case is not resolved by the mini-Markman proceeding.

2. The Court will hold a "mini-Markman" hearing on April 5, 2006, at 9:00 a.m. concurrently in both related cases. The purpose of the "mini-Markman" hearing will be to construe the patent-at-issue, U.S. Patent No. 6,449,634, with respect to the sole issue of whether the patent's claims require steps from independent parties.

3. The schedule of submissions prior to that hearing is set forth below:

**CASE MANAGEMENT ORDER**

Case Nos. C 05-00636 SBA and C-05-00990 SBA

<u><b>Deadline</b></u>	<u><b>Activity</b></u>
December 16, 2005	Exchange of Proposed Terms and Claim Elements for Construction (Pat. L.R. 4-1). The parties are to limit the terms to be construed to no more than six terms.
December 23, 2005	Exchange of Preliminary Claim Constructions and Extrinsic Evidence (Pat. L.R. 4-2).
January 13, 2006	Joint Claim Construction and Prehearing Statement (Pat. L.R. 4-3).
February 13, 2006	Claim Construction Discovery closes.
February 27, 2006	Bigfoot and Yesmail file their "mini-Markman" briefs.
March 13, 2006	Digital Impact files its opposition papers.
March 20, 2006	Bigfoot and Yesmail file their reply papers.
April 5, 2006 @ 9:00 AM	Mini-Markman hearing

3. The parties anticipate that discovery in this case will require the disclosure of substantial amounts of confidential, proprietary and other commercially sensitive information, and therefore will seek the entry of a mutually agreeable protective order in each related case. All other proceedings and disclosures will be deferred until after the Court issues its mini-Markman order. If that order does not dispose of the case, the parties may propound discovery on any of the remaining issues in the case without further leave of Court.

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1           4.       After issuing its mini-Markman order, the court shall, if necessary, set a date for a  
2 further case management conference for the purpose of scheduling dates for the balance of the  
3 case.

4 DATED: 10/5/05

  
HON. SAUNDRA B. ARMSTRONG  
UNITED STATES DISTRICT JUDGE

**ATTACHMENT A**

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